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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

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MARY A. BYARS,

Plaintiff and Appellant,

v.

GREGORY SCHASIEPEN, as Trustee, etc. et al.,

Defendants and Respondents.

C086437

(Super. Ct. No. PP20150051)

Mary Byars appeals from an order: (1) denying her petition for approval of a settlement agreement and (2) approving the sale of the primary asset of the Francis M. Yost 2003 Revocable Trust (the Trust). Byars argues her petition should have been approved because the elements for modifying a trust under Probate Code section 15403 were satisfied.<sup>1</sup> The balance of her arguments assume such a motion was made: She contends the superior court acted on a mistaken view about the scope of its discretion to

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<sup>1</sup> Undesignated statutory references are to the Probate Code.

modify the Trust under section 15403, and she also argues there was no rational basis to deny the petition and approve the sale. Because the Trust beneficiaries never petitioned for modification of the trust pursuant to section 15403, Byars has not demonstrated reversible error. We will affirm the court's order.

## **I. BACKGROUND**

Yost died in June 2014 in El Dorado County. She was survived by her daughters, Byars and respondent Lynn Tibbetts. Prior to Yost's death, she lived primarily in Placerville and had a second residence in Arizona. Tibbetts filed a probate action in Arizona seeking probate of a will executed by Yost in 2003. She also filed various civil complaints in Arizona against Byars. Byars filed a probate action in California seeking probate of a 2014 will. Byars and Tibbetts are the sole beneficiaries of the Trust. The Trust provides that, upon the death of Yost, the successor trustee shall convey the Trust estate to Yost's daughters in equal shares. The Trust's primary asset was the house in Placerville that served as Yost's primary residence. Her daughters were co-trustees of the Trust until they were removed by the court in this action and respondent Gregory Schasiepen was appointed successor trustee.

In August 2016, respondent San Juanita Hupcey entered into an agreement with the trustee for the purchase of the California home.<sup>2</sup> The close of escrow was delayed by the ongoing litigation regarding Yost's estate, and the purchase agreement was extended through January 2018.

In April 2017, a settlement conference was conducted as part of the Arizona probate proceedings. As a result of the settlement conference, Byars, Tibbetts, and Tibbetts's husband entered into a nine-page settlement agreement and release that purports, in part, to assign various assets that are not part of the Trust and assign to Byars

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<sup>2</sup> Hupcey is the only respondent who filed a respondent's brief in this appeal.

all liabilities related to the Trust and “the failed sale of the California trust property.” The agreement provides Byars “shall receive title in fee simple to the California House. The Trustee shall convey title to the California House to [Byars] as soon as practicable.” The agreement further states Byars “shall be allowed to seek removal of the California court-appointed Trustee and the substitution of herself as sole Trustee of the Trust to obtain control over the California House, to re-title the California House to herself, and to complete the Trust administration.” The agreement also settles other disputes. For example, it agrees to the probate of Yost’s 2003 will in Arizona.

On August 16, 2017, Schasiepen filed a petition for settlement of first account, for approval of trustee’s and attorney’s fees, and for instructions. As relevant to this appeal, Schasiepen sought instructions on how to proceed with respect to the California house.

On August 25, 2017, the settlement agreement was approved by the court in Arizona. On the same date, Byars’s request for dismissal as to her petition for probate was entered. Byars subsequently filed a petition for approval of the settlement agreement in this trust proceeding. Byars’s petition estimates the Trust’s unpaid liabilities are \$90,000, and proposed to transfer the California home to Byars in conjunction with her obtaining a reverse mortgage secured against the property that would result in the deposit of \$130,000 into a blocked account to pay the expenses and liabilities of the Trust. The petition attaches the settlement agreement as an exhibit but seeks more than the approval of the agreement. It also sought a court order: (1) “[a]uthorizing and directing the interested parties to perform according to the terms of the Settlement Agreement,” (2) appointing Byars as the sole successor trustee of the Trust, (3) “authorizing and directing the trustee of the Trust to transfer the Placerville Property to” Byars, and (4) directing Byars “to deposit \$130,000 into a blocked account directly from the escrow for the reverse mortgage obtained by her in conjunction with the transfer of the Placerville Property.”

In a November 17, 2017 ruling, the court approved the sale of the home to Hupcey and denied Byars's petition to approve the settlement agreement. The ruling stated, "[T]he court is unwilling to modify the terms of the Trust. Since not all interested parties participated in or agreed to the Arizona settlement, it is not binding on the Trustee and is outside the trust document." Byars filed a timely appeal from this order, though not before the property was sold.

## II. DISCUSSION

Byars asserts the settlement agreement "essentially" provides for the Trust to be modified because it provides for her receipt of the California house.<sup>3</sup> She does not address the other provisions of the settlement agreement or the relief her petition requests that it is outside of that agreement. Nor does she address the superior court's concern that the settlement agreement was outside of the Trust and did not involve all of the interested parties. Rather, her argument on appeal is that she is entitled to an order approving her petition to approve the entire settlement agreement because all the elements for modifying a trust under section 15403 were satisfied. Her argument is unpersuasive.

The Probate Code provides various mechanisms for seeking the modification of a trust. (E.g., §§ 15403, 15404, 15408, 15409.) At the time of the trial court's ruling, section 15403 provided, in relevant part: "(a) Except as provided in subdivision (b), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust *upon petition* to the court. [¶] (b) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so

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<sup>3</sup> Schasiepen's response to Byars's petition similarly characterized it as asking the superior court "to approve the[] settlement, essentially modify the terms of the Trust, and appoint Ms. Byars successor trustee."

under the circumstances outweighs the interest in accomplishing a material purpose of the trust.”<sup>4</sup> (Stats. 1990, ch. 79, § 14, pp. 934-935; italics added.) Byars and Tibbetts never petitioned the court for modification of the Trust. The fact the settlement agreement would “essentially” require a modification of the Trust does not alter the nature of Byars’s request. Byars never made any reference to section 15403 in her petition to approve the settlement agreement, and no one cited this statute at the hearing on her petition. Nor did Byars or Tibbetts present any arguments regarding the material purposes of the Trust to the superior court. The fact the settlement agreement itself was executed by Byars and Tibbetts did not convert it or the petition to confirm it into a petition to compel modification or termination of the Trust pursuant to section 15403.

The superior court’s ruling denying the petition to approve the settlement agreement does state, in part, that the court “is unwilling to modify the terms of the Trust.” But the court did not rule on any pending petition requesting modification of the Trust. It was ruling on a petition to confirm a settlement agreement and a request for instructions regarding the disposition of property. We cannot conclude the court erred by denying a motion that was never made, or that it misunderstood the scope of its discretion with respect to a motion that was not before it and based on a showing Byars never made. Moreover, Byars has failed to address the court’s statement that “[s]ince not all interested parties participated in or agreed to the Arizona settlement, it is not binding on the Trustee and is outside the trust document.” Thus, she has failed to establish reversible error.

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<sup>4</sup> As amended, the statute authorizes the beneficiaries to petition the court for modification or termination of a trust, but no longer uses the word “compel.” (§ 15403, subd. (a).)

### III. DISPOSITION

The court's November 17, 2017 order is affirmed. Respondents Gregory Schasiepen and San Juanita Hupcey shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278.)

/S/

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RENNER, J.

We concur:

/S/

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RAYE, P. J.

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DUARTE, J.